



THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

February 21, 1975

**The Honorable Joe Earnest
County Attorney
Mitchell County
P. O. Box 443
Colorado City, Texas 79512**

Letter Advisory No. 89

**Re: Authority of commissioners
court over salaries and expenses
of constables prior to the effective
date of article 3912k, V. T. C. S.**

Dear Mr. Earnest:

You have requested our opinion on two questions. The first asks whether the Commissioners Court acted properly on August 31, 1971, when it reduced the salaries of the constables of Mitchell County to \$1.00 per month and established a monthly expense and travel allowance for each constable effective September 1, 1971, to be paid until each one completed his term of office. The new expense and travel allowances which were in fact the same amounts that had previously been budgeted as "salary," were as follows: Constable Precinct 1, \$119.00 per month; Constables Precincts 2, 3 and 4, \$93.00 per month each. These amounts were paid through December of 1972 when each constable's term of office ended. Since January 1, 1973 the salary of a constable in Mitchell County has been \$1.00 per month without any additional compensation of any sort. You explain that the Court acted in this manner because, in its view "[t]he constables of our county have not had any work to do, merely holding an office."

The Constable of Precinct 3 has called to the attention of the Commissioners Court the prohibition in article 3912k, V. T. C. S., against lowering such salaries in effect on January 1, 1972. It is argued that the "salaries" effective on that date under the statute totalled \$94.00 rather than \$1.00. Article 3912k reads in pertinent part:

**Section 1. Except as otherwise provided by this
Act and subject to the limitations of this Act, the**

commissioners court of each county shall fix the amount of compensation, office expense, travel expense, and all other allowances for county and precinct officials and employees who are paid wholly from county funds, but in no event shall such salaries be set lower than they exist at the effective date of this Act.

. . . .

Section 9. This Act is effective for salaries, expenses and allowances paid beginning January 1, 1972. (Emphasis added)

Your questions then turn on the definition and construction of the phrase "such salaries" as used in the statute. If it means "compensation" paid for services rendered, the rate in effect on January 1, 1972, was \$1.00 per month. However, if "such salaries" refers to "compensation, office expense, travel expense, and all other allowances" inclusively, the rate was \$94.00 (\$93.00 "travel and expense allowances" and \$1.00 "salary") for Precinct 3 at that time.

It is our opinion that the Legislature intended for the phrase "such salaries" to refer specifically to "compensation" for services rendered and not to expenses. Otherwise, "salaries" would have been defined to include expenses and allowances. In fact, travel expenses, office expenses, and all other allowances were distinguished from salaries or compensation throughout. Apparently, "compensation" was used here to assure that all county and precinct officials and employees -not only those on a salary basis- who are paid wholly from county funds would be covered by article 3912k. See Wichita County v. Robinson, 276 S. W. 2d 509, 513 (Tex. Sup. 1954); Attorney General Opinion M-972 (1971).

There is no question that article 3912k establishes in the commissioners court the power, with only this basic minimum requirement, to decide how much certain officials and employees of the county will be paid. It can change the amount at any time. Baxter v. Rusk County, 11 S. W. 2d

648 (Tex. Civ. App. --Texarkana 1928, no writ); Carver v. Wheeler County, 200 S. W. 537 (Tex. Civ. App. --Amarillo 1918, no writ); Attorney General Opinion M-1176 (1972); 47 Tex. Jur. 2d Public Officers Subsection 175. On the question of whether a constable's salary in Attorney General Opinion ~~M~~-1948 could be set at \$1.00 per month in reaction to article 16, section 61 of the Texas Constitution, this office stated in Attorney General Opinion V-749 (1948):

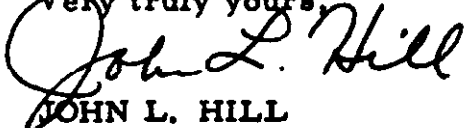
. . . the amount of salaries to be paid the constables in such counties is left to the sound discretion of the Commissioners Courts.

Thus, in answer to your first question, the court did have the authority to change the salaries in question. Here, the Mitchell County Commissioners Court acted within the limits of article 3912k. Because the salaries of the constables on the effective date of the act were in actuality \$1.00, Attorney General Opinion H-39 (1973) applies and \$1.00 therefore is the minimum that must be paid by the County to its constables.

Under the statute, the court retained the power to alter any other "allowance" which it did by creating the constables' allowance to terminate at the end of their "present" term of office.

You next ask whether the Commissioners Court properly refused to pay a constable more than \$12.00 per year for 1973 and succeeding years. In view of our earlier discussion, it is our opinion that since the court had the power to set the salary at one dollar per month, it had the right to refuse to pay any more. Your second question is answered affirmatively.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee